

Assembly Bill No. 2672

CHAPTER 764

An act to amend Section 72410 of, to amend, repeal, and add Sections 72400, 72421, 72430, and 72440 of, and to add and repeal Section 72425 of, the Public Resources Code, relating to vessels.

[Approved by Governor September 24, 2004. Filed
with Secretary of State September 24, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2672, Simitian. Large passenger vessels: sewage.

Existing law prohibits large passenger vessels, as defined, from releasing specified substances into the marine waters of the state. Existing law requires the State Water Resources Control Board to apply to the federal government to prohibit the release of specified substances in waters that are not in state waters, but are in certain marine sanctuaries.

Federal law prohibits a state from prohibiting vessels from discharging sewage, unless the state applies to and receives approval from the United States Environmental Protection Agency.

Existing law requires an owner or operator of a large passenger vessel that releases specified substances into the marine waters of the state or a marine sanctuary, as defined, to immediately report the release to the board, as specified.

This bill would require, until January 1, 2010, the board to determine whether it is necessary for the state to apply to the federal government to authorize the state to prohibit the release of sewage, as defined, from large passenger vessels into the marine waters of the state. If the board determines that it is necessary, the bill would require the board to make that application. The bill would provide that it is not the Legislature's intent to establish for the marine waters of the state a no-discharge zone for sewage from all vessels, but only for a class of vessels. The bill would provide that the Legislature intends to request the Congress of the United States to provide the state with authority to regulate the release of sewage from large passenger vessels into the marine waters of the state, as specified.

If the application is approved or the board determines that the application is not required, the bill would prohibit, until January 1, 2010, the owner or operator of a large passenger vessel from releasing, or permitting anyone to release, any sewage from the vessel into the marine waters of the state, and would subject a person who violates that prohibition to a civil penalty, as specified.

The bill would require, until January 1, 2010, the owner or operator of a large passenger vessel that releases sewage into the marine waters of the state or a marine sanctuary, as defined, to immediately report the release to the board, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 72400 of the Public Resources Code is amended to read:

72400. (a) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state and marine sanctuaries requires that the release from large passenger vessels of sewage sludge and oily bilgewater, into the marine waters of the state and marine sanctuaries, should be prohibited.

(b) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state requires that the release of sewage from large passenger vessels into the marine waters of the state should be prohibited.

(c) The Legislature intends to request the Congress of the United States to amend the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 and following) to provide California with authority similar to that granted to the State of Alaska by Public Law 106-554, to regulate the release of sewage from large passenger vessels in the marine waters of the state.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 1.5. Section 72400 is added to the Public Resources Code, to read:

72400. (a) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state and marine sanctuaries requires that the release from large passenger vessels of sewage sludge and oily bilgewater, into the marine waters of the state and marine sanctuaries, should be prohibited.

(b) This section shall become operative on January 1, 2010.

SEC. 2. Section 72410 of the Public Resources Code is amended to read:

72410. (a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) “Board” means the State Water Resources Control Board.

(c) “Large passenger vessel” or “vessel” means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:



(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(d) “Marine waters of the state” means “coastal waters” as defined in Section 13181 of the Water Code.

(e) “Marine sanctuary” means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(f) “Oil” has the meaning set forth in Section 8750.

(g) “Oily bilgewater” includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(h) “Operator” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(i) “Owner” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(j) “Release” means discharging or disposing of wastes into the environment.

(k) “Sewage” has the meaning set forth in Section 775.5 of the Harbors and Navigation Code, including material that has been collected or treated through a marine sanitation device as that term is used in Section 312 of the Clean Water Act (33 U.S.C. Sec. 1322) or material that is a byproduct of sewage treatment.

(l) “Sewage sludge” has the meaning set forth in Section 122.2 of Title 40 of the Code of Federal Regulations.

SEC. 3. Section 72421 of the Public Resources Code is amended to read:

72421. (a) If a large passenger vessel releases sewage sludge, sewage, or oily bilgewater into the marine waters of the state or a marine sanctuary, the owner or operator shall immediately, but no later than 24 hours after the release, notify the board of the release. The owner or operator shall include all of the following information in the notification:

- (1) Date of the release.
- (2) Time of the release.
- (3) Location of the release.
- (4) Volume of the release.
- (5) Source of the release.
- (6) Remedial actions taken to prevent future releases.



(b) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 4. Section 72421 is added to the Public Resources Code, to read:

72421. (a) If a large passenger vessel releases sewage sludge or oily bilgewater into the marine waters of the state or a marine sanctuary, the owner or operator shall immediately, but no later than 24 hours after the release, notify the board of the release. The owner or operator shall include all of the following information in the notification:

- (1) Date of the release.
 - (2) Time of the release.
 - (3) Location of the release.
 - (4) Volume of the release.
 - (5) Source of the release.
 - (6) Remedial actions taken to prevent future releases.
- (b) This section shall become operative on January 1, 2010.

SEC. 5. Section 72425 is added to the Public Resources Code, to read:

72425. (a) If the Administrator of the United States Environmental Protection Agency approves the application for sewage made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of a large passenger vessel may not release, or permit anyone to release, any sewage from the vessel into the marine waters of the state.

(b) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 6. Section 72430 of the Public Resources Code is amended to read:

72430. (a) A person who violates Section 72420 or 72425 is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the



violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d) (1) A civil action brought under this section may only be brought in accordance with this subdivision. That civil action may be brought by the Attorney General upon complaint or request by the Department of Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

(e) This section shall become inoperative on January 1, 2010, and, as of January 1, 2010, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 72430 is added to the Public Resources Code, to read:

72430. (a) A person who violates Section 72420 is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic



benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d) (1) A civil action brought under this section may only be brought in accordance with this subdivision. That civil action may be brought by the Attorney General upon complaint or request by the Department of Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

(e) This section shall become operative on January 1, 2010.

SEC. 8. Section 72440 of the Public Resources Code is amended to read:

72440. (a) (1) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage or sewage sludge from large passenger vessels into the marine waters of the state or to prohibit the release of sewage sludge from large passenger vessels into marine sanctuaries, as described in subdivision (a) of Section 72420 and Section 72425. If the board determines that application is necessary for either sewage or sewage sludge, or both, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage or sewage sludge, or both, as necessary, from large passenger vessels into the marine waters of the state and, if necessary, to authorize the state to prohibit the release of sewage sludge from large passenger vessels into marine sanctuaries.

(2) It is not the Legislature's intent to establish for the marine waters of the state a no discharge zone for sewage from all vessels, but only for a class of vessels.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.



(c) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 9. Section 72440 is added to the Public Resources Code, to read:

72440. (a) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state or marine sanctuaries. If the board determines that application is necessary, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage sludge from large passenger vessels into the marine waters of the state and marine sanctuaries.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.

(c) This section shall become operative on January 1, 2010.

